IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

Bail Appl..No. 4240 of 2007(F)

ST.1520/2005 of SPL.J.M.F.C. FOR TRIAL OF MARADU CASES, KOZHIKODE
S.T.NO.1520/2005 OF J.F.C.M VI, MARADU

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PETITIONER/ACCUSED

FASALU RAHMAN
KALLUMURIKKAL (H),KUMBIDI P.O.,
PALAKKAD.

BY ADV. SRI.D.KISHORE

RESPONDENTS/STATE & COMPLAINANT:

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1. STATE OF KERALA REPRESENTED BY ITS
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE
THIRTHALA POLICE STATION,PALAKKAD DISTRICT.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4240 of 2007

Dated this the 13th day of July 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 138 of the Negotiable Instruments Act. Cognizance has been taken. The petitioner has not appeared before the learned Magistrate. Consequently, he finds a warrant of arrest issued by the learned Magistrate chasing him.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was on account of reasons beyond his control. The petitioner is willing to appear before the learned Magistrate and co-operate with the expeditious disposal of the case against him. In these circumstances, appropriate directions may be issued under Section 438 Cr.P.C or 482 Cr.P.C, submits the learned counsel for the petitioner.

3. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

6. Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007